



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

August 18, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy J. Mahar, Esq.
NYS Department of Health
Corning Tower-Room 2429
Empire State Plaza
Albany, New York 12237

Barry A. Gold, Esq.
Thuillez, Ford, Gold & Conolly
90 State Street-Suite 1522
Albany, New York 12207

Ronald Donelson, M.D.
550 Harrison Street
Syracuse, New York 13202



RE: In the Matter of Ronald Donelson, M.D.

Dear Mr. Mahar, Mr. Gold and Dr. Donelson:

Enclosed please find the Determination and Order (No. 95-183) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

Tyrone T Butler (H)

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

IN THE MATTER

OF

RONALD G. DONELSON, M.D.

DETERMINATION

AND

ORDER

BPMC-95-183

J. LARUE WILEY, M.D., Chairperson, **DAVID C. MENDELSON, M.D.**, and **NANCY J. MACINTYRE, R.N., Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **JERRY JASINSKI**, Acting General Counsel, **TIMOTHY J. MAHAR, ESQ.**, Assistant Counsel of Counsel. The Respondent appeared by **THUILLEZ, FORD, GOLD & CONOLLY, P.C., ESQS.**, **BARRY GOLD, ESQ.** of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged two specifications of professional misconduct: conduct evidencing moral unfitness and willful physical abuse.

The charges are more specifically set forth in the Statement of Charges, dated January 26, 1995, a copy of which is attached as Appendix I hereto and made a part of this Determination and Order.

SUMMARY OF PROCEEDINGS

Notice of Hearing Date:	January 26, 1995
Pre-Hearing Conference:	March 6, 1995
Hearing Dates:	April 19, 1995 May 11, 1995 May 25, 1995
Received Petitioner's Proposed Findings of Fact, Conclusions of Law:	June 13, 1995
Received Respondent's Proposed Findings of Fact, Conclusions of Law:	June 13, 1995
Deliberation Date:	June 22, 1995
Places of Hearing	Best Western Airport Inn Syracuse, New York and Department of Health Offices 217 S. Salina Street Syracuse, New York

WITNESSES

For the Petitioner:

"A.M.E." (Patient A)
Allan LaFlore

For the Respondent:

Edmund J. Trepacz, M.D.
Ronald G. Donelson, M.D.
Norman J. Lesswing, Ph.D.

FINDINGS OF FACT

Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited.

GENERAL FINDINGS OF FACT

1. Respondent is licensed to practice medicine in the State of New York and is currently registered with the New York State Education Department. (Pet. Ex. 2)
2. Respondent is a Board Certified Orthopedic Surgeon who specializes in the nonoperative management of patients with painful spinal disorders. He emphasizes the McKenzie approach to diagnosis and treatment. (Resp. Ex. D; T. 272-274, 281, 282)
3. Patient "A", date of birth October 20, 1954, was examined by Respondent in his office August 26, 1992, on referral from her family physician. (Pet. Ex. 3 pp. 2-3, 6-8; T. 31)

4. Patient "A" had a history of low back problems going back to 1987, with surgical procedures on two (2) lumbar discs in December 1987. Her recovery from these was prolonged; she was out of work until October 1989, and she was left with residual low back and left leg pain. (Pet. Ex. 3 p. 4, 6; Ex. 4; T. 28, 30)
5. After lifting at work in July 1991, Patient "A" had increased low back pain and a new complaint of right leg pain. (Pet. Ex. 3 p.6; T. 30, 40)
6. Prior to her office visit to Respondent in August 1992, Patient "A" received documents from Respondent's office requesting information regarding her medical history, including two (2) body diagrams (front and rear views) on which she was to indicate where she felt various types of pain, numbness, or pins and needles. (Pet. Ex.3 p. 5; Pet. Ex. 3A; T. 32) The more accurate of these Exhibits is "3A", in which, entries by the patient are in dark blue or black ink and additions made by Respondent are in red ink. (T. 33-35)
7. The body diagram completed by Patient "A" indicates that she had aching pain in the low back bilaterally and aching and stabbing pain in the left buttock. Additions to the areas of aching pain elicited by Respondent and indicated by him on the same diagrams in red are in the anterior right thigh and in the right buttock. (Pet. Ex. 3A)
8. Patient "A" testified that during examination by Respondent, while she was lying on her back and he was standing at her right side, Respondent pressed with his fingertips on the outer portion of her right hip and continued moving his fingers toward the midline, inquiring if that caused pain. He then pulled the band of the right leg of her underpants to the left and pressed in "the general pelvic area". Patient "A" testified that next Respondent pulled her underwear to the left with his left hand, exposing her "vagina" and put the ungloved fingers of his right hand to spread her labia and put his fingers on top of her clitoris. She stated that

Respondent then took his fingers off her "vagina" and asked her "how was intercourse" in a broken and whispery voice, to which she did not reply. The duration of his fingers being in contact with her labia was three (3) to four (4) seconds. She testified that she was uneasy or "shookened up" during the "hip" and genital portion of the examination. (T. 46-52) The examination was then completed without further contact with her genital area. (T. 51, 52)

9. On leaving Respondent's office, Patient "A" testified that she felt too upset to drive and asked her son to drive home. She started crying upon getting into her car. Later that day, she told her husband and her family physician about this episode. (T. 53, 54, 56, 57)
10. Patient "A" testified that she requested a referral from her family physician for counseling. She had Behavioral Medicine counseling sessions with Linda Feinskin, a counselor at Health Services Association of Central New York on September 10, September 23 and October 1, 1992. The first two (2) of these dealt with anxiety symptoms related to her complaint of sexual abuse by Respondent during the examination described above. (Resp. Ex. B; T. 58)
11. Patient "A" indicated that what she considered to be her right hip was actually the right anterior superior iliac spine (T. 102) She also indicated that the vagina was the entire area of the female external genitalia depicted in the illustration admitted into evidence as Respondent's Exhibit A. (Resp. Ex. A; T. 88)
12. Respondent testified that his examination of the patient's inguinal area and external genitalia was essentially as she described, including duration of the labial examination, except his anatomical terminology was more accurate, and he stated that he pressed on the pubic bone rather than the clitoris. Respondent also testified that his question about intercourse was directed at asking her about discomfort with that act. (T. 308-311)

13. Respondent further testified that the inguinal and pubic portions of his examination were to evaluate possible non-spinal causes of her inguinal and anterior thigh symptoms.
(T. 306-308)
14. Respondent testified that a few hours after completing his examination of Patient "A", while dictating his report to the referring physician, he thought the labial part of the examination was unnecessary. (T. 347, 415, 416, 589) In the same report he mentioned the absence of right inguinal tenderness, but made no reference to examination of the patient's labia.
(Pet. Ex. 3 p. 7; T. 388, 389)
15. Respondent was interviewed by Senior Investigator, Allan LaFlore, and Dr. Edmund Trepacz at the Department of Health office in Syracuse on October 29, 1992, concerning allegations by Patient "A" of inappropriate conduct during his examination of her on August 26, 1992. (T. 134, 135, 186, 333, 336)
16. Respondent testified that he contacted Ms. Suzanne Stanton of the Medical Society of the State of New York's (MSSNY) Committee for Physicians' Health (CPH) on November 2, 1992. (T. 350, 361)
17. Partly as a result of his interaction with Ms. Stanton, Respondent instituted a program of using a chaperon while examining female patients and having his practice monitored by another physician. (T. 361, 362, 423)
18. Respondent consulted a Syracuse psychiatrist, Alan R. Beeber, M.D., in January 1993.
(Pet. Ex. 5 pp. 56-62; T. 431)

19. A conference call was held on January 14, 1993 between Dr. Beeber, Ms. Stanton, Dr. Mansky of MSSNY CPH, and Respondent in which Ms. Stanton and Dr. Mansky recommended that Respondent undergo evaluation by a specialized group in the Midwest. (Pet. Ex. 5 p. 61; T. 364)
20. Between January 31 and February 5, 1993, Respondent was assessed by a four person professional team at Behavioral Care network in Minneapolis: a psychiatrist, a psychologist, an internist and a nurse. (Pet. Ex. 5 pp. 49-55, 77-79; T. 425, 499)
21. In a preliminary report to Respondent's counsel, dated February 10, 1993, Richard Irons, M.D. an internist and Medical Director of the Minneapolis group stated that all four team members agreed upon an Axis I diagnosis of a psychosexual disorder, or paraphilia, associated with "professional boundary violation, compulsive thought patterns, and impulsive action". The boundary violation involved inappropriate and non-therapeutic touch of one of Respondent's patients. No Axis II diagnosis was made in this report. (Pet. Ex. 5 pp. 77-79; T. 499)
22. In a separate report, the psychologist in the Minneapolis group, Dr. Richard Sethre, made an Axis I diagnosis of sexual dysfunction and an Axis II diagnosis of dependent personality. (Pet. Ex. 5 p. 54; T. 500, 501)
23. The Minneapolis group recommended that Respondent engage in psychotherapy, education in appropriate office conduct toward patients, and have his practice monitored by an appropriate professional mentor. (Pet. Ex. 5 pp. 78, 79)

24. On April 2, 1993, Respondent began seeing Norman J. Lesswing, Ph. D., a Licensed Clinical Psychologist, on referral from MSSNY. Between April 2, 1993 and May 15, 1995, there were ten (10) to twelve (12) sessions with Dr. Lesswing, lasting up to one (1) hour each. (Resp. Exs. F, G; T. 364, 425-528, 454-456)
25. On June 29, 1993, after spending approximately eight (8) hours with Respondent and reviewing records from the Minneapolis group, Dr. Lesswing wrote Ms. Stanton of the CPH to the effect that Respondent showed no signs of sexual disorder or paraphilia and that the episode leading to the charge of professional misconduct represented a "brief, temporary, and isolated lapse in judgement". Dr. Lesswing testified to the same effect and also stated this lapse in judgement was "not motivated by a prurient interest or any kind of sexual deviancy". (Resp. Ex. F; T. 455, 464, 465, 477)
26. On November 7, 1993, Dr. Lesswing again wrote Ms. Stanton following several more sessions with Respondent and two (2) telephone consultations with Dr. Irons. He presented arguments on both sides of the issue of whether or not Respondent had a psychosexual disorder. He stated his opinion that Respondent did not, at that time, suffer from a psychosexual disorder. His opinion was based largely on Respondent's behavior after the alleged offense, and he repeated his opinion that this event represented a "brief and temporary lapse in judgment and impulse control, explicable on the basis of psychological factors not involving a paraphilia". Dr. Lesswing testified to essentially the same substance. (Resp. Ex. G; T. 483-484, 523-527)
27. Dr. Lesswing testified that in his opinion that from a psychological point of view, Respondent did not wilfully abuse a patient and was not morally unfit to practice medicine. (T., 487-488)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the following Factual Allegations should be sustained. The citations in parenthesis refer to the Findings of Fact which support each Factual Allegation:

Paragraph 1: (2 through 7)

Paragraph 2: (8, 10) (vote 2 to 1)

The Hearing Committee further concluded that the following Specification should be sustained. The citations in parenthesis refer to the Factual Allegations which support each specification:

CONDUCT EVIDENCING MORAL UNFITNESS

Not Sustained

WILLFUL PHYSICAL ABUSE

Second Specification (Paragraphs 1 and 2) (vote 2 to 1)

DISCUSSION

Respondent is charged with two (2) specifications alleging professional misconduct within the meaning of Education Law Section 6530. A majority of the Hearing Committee concluded, by a preponderance of the evidence, that one (1) of the two (2) specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset, the Hearing Committee made a determination as to the credibility of the witnesses presented by the parties. The Department's witnesses were Patient "A", Allan LaFlore and Edmund Trepacz, MD. The Hearing Committee found Patient "A" to be a credible witness who provided straightforward testimony at the hearing. She conducted herself well under an emotionally charged situation and was able to relate what happened during Respondent's exam to upset her. The Hearing Committee further notes that Patient "A" was distraught enough to call her referring physician right after the incident. (T. 56-58)

Allan LaFlore, a senior investigator for the Office of Professional Medical Conduct testified regarding his interviews with Respondent after the incident. Mr. LaFlore testified about his interpretation of Respondent's motives, feelings and demeanor during the course of several interviews. Mr. LaFlore had no independent notes to refer to during his testimony and had to rely upon the notes of Dr. Trepacz. The Hearing Committee found Mr. LaFlore's accuracy of recall to be questionable and that he read more into Respondent's answers and his demeanor than what was really there. Therefore, his testimony was given less credence. Edmund J. Trepacz, M.D., the Medical Officer for the Department of Health Syracuse Area Office, also testified regarding his interviews with the Respondent. The Hearing Committee found that Dr. Trepacz's testimony did not provide any new or independent information that was significant to the charges and that his verbal fencing with Respondent's counsel on cross examination was counter productive.

Respondent's witnesses consisted of himself and Norman J. Lesswing, Ph.D. The Hearing Committee found Respondent to be a very poised witness who responded appropriately to all of the Committee's questions. The Hearing Committee realizes that Respondent made his complete psychiatric record available when he was not obligated to do so. They found him to be candid about his feelings and overall credible in his factual accounting of events. Norman J. Lesswing, Ph.D., a Licensed Clinical Psychologist, practices in the areas of adult and adolescent clinical psychology, forensic psychology, police psychology, neuropsychology, chemical dependency and dual diagnosis assessment. (Resp. Ex. E) The Hearing Committee notes that Dr. Lesswing has spent the most time with Respondent of all of the professionals who interviewed or assessed Respondent after the incident of August 26, 1992. The Hearing Committee recognizes Dr. Lesswing as an expert in the area of addictive behavior and psychological evaluation of sexual abuse, and gave his testimony and report, which were subject to competent cross-examination, considerably more weight than the documentary evidence from the Minneapolis group, which was not.

WILLFUL PHYSICAL ABUSE

A majority of the Hearing Committee finds that during the physical examination of August 26, 1992, Respondent's touching of Patient "A"'s genitals was sexual in nature and not medically justified. Patient "A" interpreted the touching as sexual and the Hearing Committee believes her.

Respondent admitted on the same day of the exam, while dictating his report to the referring physician, that he began to query the appropriateness of the examination of the labia. (T. 589, Resp. Ex. F, p. 2) During his psychological assessment by the Behavioral Care Network in Minneapolis, Respondent stated that he was distressed by his "slip." (Pet. Ex. 5, p. 54) During his sessions with Dr. Lesswing, Respondent stated that while examining Patient "A"'s inguinal area, he was momentarily distracted by the fact that Patient "A"'s pubic hair had been trimmed into a "bikini cut." Dr. Lesswing also referred to the incident as a "brief, temporary, and isolated lapse in judgment." (Resp. Ex. F, pp.2-3)

Although Dr. Lesswing did not characterize Respondent's actions as willful abuse, a majority of the Hearing Committee found that Respondent, even if momentarily distracted, acted intentionally, albeit impulsively, in touching Patient "A"'s genitalia in a manner that was sexual in nature and not medically justified. As a result, the charge of willful physical abuse in the Second Specification is sustained.

CONDUCT EVIDENCING MORAL UNFITNESS

Respondent has also been charged with conduct evidencing moral unfitness to practice medicine. Before reaching a conclusion, the Hearing Committee closely examined the reports of Dr. Lesswing (Resp. Exs. F and G) , Dr. Beeber (Pet. Ex. 5, pp. 56-62) and the Behavioral Care Network in Minneapolis. (Pet. Ex. 5, pp. 49-55, 77-79)

Dr. Lesswing in his report as well as in his testimony felt that Respondent was subject to several high level stress factors at the time of the incident. (T. 549) One factor involved stress created by an administrator for the McKenzie Institute for which Respondent served as president of the board of directors. The administrator was suspected of embezzling funds, had disappeared and ultimately committed suicide. Another contributory factor involved Respondent's lack of intimacy with his wife at the time. (T. 464, Resp. Ex. F. p. 3) Dr. Lesswing stated that Respondent's actions at that time represented " a brief temporary and isolated lapse in judgment that was not motivated by a prurient interest or any kind of sexual deviancy ." (T.464) During their numerous sessions, Dr. Lesswing found that Respondent was willing to assume responsibility for his behavior and that he was highly introspective rather than defensive in discussing his situation. (T. 465-466) More specifically, Dr. Lesswing stated that knowing Respondent as he does, Respondent has the propensity to "in a sense, incriminate himself and blow things up rather than to cover it up or deny, so I think his characteristic style of dealing with situations and dealing with problems and certainly dealing with anything that would be a personal shortcoming to him would be that he would err in that direction of blowing things up." (T. 551) Dr. Lesswing also had the

opportunity to meet with Respondent's wife (T. 457,472) and he believes that the quality of the intimacy in Respondent's marriage has improved since the incident. (T. 466) Dr. Lesswing concluded that Respondent is a well-adjusted individual who shows no signs of having a sexual disorder or paraphilia. (T. 464, Resp. Ex. F, p. 3) He further added that Respondent does not appear to have any psychopathology which requires ongoing or more intensive clinical intervention and that he in no way represents a risk to his patients. (T. 484, Resp. Ex. F. p. 3)

The Hearing Committee also reviewed the report of Alan R. Beeber, M.D. an Associate Professor in the Department of Psychiatry at the SUNY Health Science Center in Syracuse, New York. Dr. Beeber met with Respondent on January 8th and 11th of 1993, and also spoke to Respondent by phone on January 14, 1993. The Hearing Committee notes that after the January 11th session, Dr. Beeber found that there was no clear indication from the history and examination of a diagnosable psychiatric disorder. Dr. Beeber counselled Respondent to have a chaperon with him when examining patients, especially female patients to protect himself against future allegations. (Pet. Ex. 5, p. 60)

Upon recommendation of the Medical Society of New York (MSSNY), Respondent underwent evaluation by the Behavioral Care Network in Minneapolis between January 31 and February 5, 1993. In a report dated February 10, 1993, Richard Irons, M.D., Medical Director of the Minneapolis group stated that a four person professional team agreed upon an Axis I diagnosis of psychosexual disorder, or paraphilia associated with "professional boundary violation, compulsive thought patterns, and impulsive action." The team recommended that Respondent engage in "insight-oriented psychotherapy" with a psychiatrist or psychologist experienced in the area of sexual misconduct. They also suggested that Respondent complete educational courses in areas which include appropriate doctor-patient boundaries and appropriate office policies and procedures to avoid allegations of professional impropriety. They also believed that Respondent should establish an ongoing relationship with an appropriate professional mentor. No Axis II diagnosis was made in this report. Although this report of Dr. Irons was indicated as preliminary, no subsequent or final report from him was offered into evidence. (Pet. Ex. 5, pp. 78-79) However, in a separate

report, Dr. Richard Sethre, a licensed psychologist with the Minneapolis group, made an Axis I diagnosis of sexual dysfunction and an Axis II diagnosis of dependent personality.

(Pet. Ex. 5, p. 54)

Dr. Lesswing testified that he spoke with Dr. Irons regarding the Minneapolis' group diagnosis of psychosexual disorder. (T. 473) Dr. Lesswing believes that Dr. Irons erroneously assumed that there was a prior incident in which Respondent inappropriately touched a patient and then based his diagnosis on a "preceding pattern of sexual dysfunction." (T. 473) Dr. Lesswing explained that while undergoing the Minneapolis evaluation, Respondent had been given an assignment to think about sexual fantasies concerning patients in the past. Respondent related a situation from several years previously when long after the event, he had fantasized about a patient who had worn brightly-colored underwear. (T. 474-475) Dr. Lesswing believes that this episode was used to establish a pattern by Dr. Irons. Dr. Lesswing disagrees with Dr. Irons diagnosis because no inappropriate touching of this patient was involved. He stated that there is no pattern of repetitive, compulsive, fixated behavior, hence no psychosexual disorder. (T.474) In addition, Dr. Lesswing found Dr. Iron's analysis to be inconsistent with a battery of comprehensive psychological tests performed in Minneapolis that indicated that Respondent was a normally adjusted individual.

(T. 477)

Dr. Lesswing also explained the significance of Axis I and Axis II diagnoses for the Hearing Committee. Axis I pertains to major psychiatric or mental disorders of a symptomatic nature. These included, various mood disorders, anxiety disorders and psychoses. Axis II pertains to personality disorders which include antisocial personality disorder, histrionic personality disorder and paranoid personality disorder (T. 547-548) With respect to Respondent, Dr. Lesswing finds no mental disorder under Axis I. For Axis II, he finds some dependent and obsessive-compulsive personality traits, but nothing of clinical or contributory significance. (T. 549)

The Hearing Committee concurs with Dr. Lesswing's assessment of the Minneapolis report. They agree that Respondent willingly provided information as part of a therapeutic exercise and that the Minneapolis group then used this information to diagnose a pattern of behavior that was based only on thought and fantasy. The Hearing Committee found many aspects of the report to be exaggerated and/or unsubstantiated, and that the ultimate diagnosis was based on inadequate evaluation. As a result, the Hearing Committee gave little weight to the Minneapolis report. They further note that Dr. Beeber, an experienced psychiatrist, found no diagnosable psychiatric disorder after two meetings with Respondent. It is also noted that the Petitioner offered no rebuttal testimony to support the contention that Respondent poses a threat to future patients and is not morally fit to practice medicine in the State of New York. The Hearing Committee agrees with Dr. Lesswing that there is no pattern of paraphilia because Respondent's actions involve a single incident. Even Dr. Irons states that if Respondent engages in therapy, is monitored and receives support he "should be able to continue to practice medicine with reasonable safety to himself and to the patients he serves with very limited risk of further occurrence of professional sexual misconduct." (Pet. Ex. 5, p. 79)

The Hearing Committee therefore finds insufficient proof to sustain the charge of conduct evidencing moral unfitness to practice medicine, thus the First Specification is not sustained.

DETERMINATION AS TO PENALTY

By a vote of two to zero (2-0), with the member who voted to not sustain the Second Specification of Charges abstaining, the Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined that Respondent's license to practice medicine in New York State shall be suspended for five (5) years following the effective date of this Determination and Order. The suspension shall be stayed in its entirety and Respondent shall be placed on probation. The terms of probation require the presence of a female chaperon during the examination of all female patients, monitoring of Respondent's records and psychiatric evaluations. The complete terms of probation are attached to this Determination and Order in Appendix II. This

determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Since early 1993, Respondent has been subjected to evaluation by MSSNY, Dr. Beeber, the Minneapolis group and Dr. Lesswing. Respondent has willingly opened up many personal aspects of his life as well as his personal medical records for inspection. Dr. Lesswing testified that because of the time he has spent working with Respondent over the past two years he has personally witnessed the positive areas of growth in Respondent's life. (T. 485) It is Dr. Lesswing's opinion that Respondent requires no further treatment and presents no future risk of harm to his patients. (T. 472-473)

Sufficient change was also obvious to the Hearing Committee. The information gleaned from Dr. Lesswing's testimony and the observation of Respondent and his wife at the hearing, suggest to the Hearing Committee that Respondent has undergone fundamental spiritual change. Thus, there is no need for revocation in this instance. The Hearing Committee however has an obligation to protect future patients from any possible risk of harm in the future. Therefore, the Hearing Committee believes that under the totality of the circumstances, a five (5) year probationary period that requires the use of a female chaperon, future psychiatric evaluations and the monitoring of Respondents records are the appropriate sanctions in this instance.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Second Specification of Professional Misconduct, as set forth in the Statement of Charges dated January 26, 1995 (Petitioner's Exhibit #1) is **SUSTAINED**; and
2. The First Specification is **NOT SUSTAINED**; and
3. Respondent's license to practice medicine in New York State be and is hereby **SUSPENDED** for a period of five (5) years from the effective date of this Determination and Order. The term of suspension shall be stayed in its entirety and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

DATED: Albany, New York
August 17, 1995


J. LARUE WILEY, Chairperson

DAVID C. MENDELSON, M.D.
NANCY J. MACINTYRE, RN, Ph.D.

TO: Timothy J. Mahar, Esq.
Assistant Counsel
NYS Department of Health
Corning Tower-Room 2429
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Ronald Donelson, M.D.
550 Harrison Street
Syracuse, New York 13202

APPENDIX I

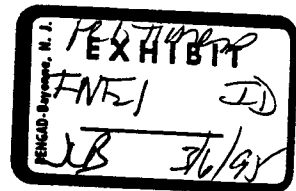
STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER : NOTICE
OF : OF
RONALD G. DONELSON, M.D. : HEARING

-----X

TO: Ronald G. Donelson, M.D.
550 Harrison Street
Syracuse, New York 13202



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 15 day of March, 1995, at 10:00 in the forenoon of that day at NYS Department of Health, Syracuse Area Office, 217 S. Salina Street, 4th Floor Conference Room, Syracuse, New York 13202 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and

you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1995), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make

findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a (McKinney Supp. 1995). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
January 26, 1995

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to: Timothy J. Mahar
Assistant Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER : STATEMENT
OF : OF
RONALD G. DONELSON, M.D. : CHARGES

-----X

Ronald G. Donelson, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1974, by the issuance of license number 120474 by the New York State Education Department.

FACTUAL ALLEGATIONS

1. On or about August 26, 1992, Respondent, an orthopedic surgeon, examined Patient A (identified in the Appendix), a female, for complaints of persistent low back and bilateral leg pain in his offices at 550 Harrison Street, Syracuse, New York.

2. During the course of the examination, Respondent touched and manipulated Patient A's genitalia with his ungloved fingers, which conduct was sexual in nature and/or without any medical purpose.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CONDUCT EVIDENCING MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) (McKinney's Supp. 1995) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

1. The facts in Paragraphs 1 and 2.

SECOND SPECIFICATION

WILLFUL PHYSICAL ABUSE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(31) (McKinney's Supp. 1995) by reason of his willfully abusing a patient physically, in that Petitioner charges:

2. The facts in Paragraphs 1 and 2.

Dated: *January 26, 1995*

Albany, New York

Peter D. Van Buren
Peter D. Van Buren
Deputy Counsel

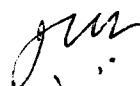
APPENDIX II

TERMS OF PROBATION

1. Dr. Donelson shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Dr. Donelson shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Donelson shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.
4. In the event that Dr. Donelson leaves New York to reside or practice outside the State, Dr. Donelson shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
5. Dr. Donelson's probation shall be supervised by the Office of Professional Medical Conduct.
6. For the first two (2) years of probation, Dr. Donelson shall have bimonthly, and for the remaining three (3) years, quarterly meetings with a monitoring physician who shall review his practice. The monitoring physician, shall not be a member of Respondent's group practice and shall be certified by the American Board of Orthopedic Surgery, who has been in practice as such for at least five (5) years, selected by Dr. Donelson and subject to the approval of the Office of Professional Medical Conduct. This monitoring physician shall review randomly selected medical records from Dr. Donelson's practice and evaluate whether Dr. Donelson's medical care compares with generally accepted standards of medical practice, and to insure that female chaperon requirements are met. Dr. Donelson shall not practice medicine in New York State until an acceptable monitoring physician is approved by the Office of Professional medical Conduct.
7. Dr. Donelson shall be required to have a female chaperon present during the examination of all female patients. Said chaperon shall be required to concurrently sign the medical records of all female patients examined by Dr. Donelson.
8. Dr. Donelson shall be subject to an annual psychiatric evaluation during the first three (3) years of his probation by a psychiatrist or psychologist who shall review Dr. Donelson's mental status with respect to the willful abuse of patients. Said psychiatrist or psychologist shall be selected by Dr. Donelson, subject to the approval of the Office of Professional Medical Conduct and he or she shall issue all psychiatric evaluations to the Office of Professional Medical Conduct.
9. Dr. Donelson shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional medical Conduct at the address indicated above.

10. Dr. Donelson shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Dr. Donelson elects not to practice medicine as a physician in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

11. If there is full compliance with every term set forth herein, Dr. Donelson may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, any be initiated against Dr. Donelson pursuant to New York Public Health Law Section 230(19) or any other applicable laws.



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